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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No.: 150304214-6231-02]

RIN 0648-BE94

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Framework Adjustment 4

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS implements approved measures in Framework 4 to the Atlantic Herring Fishery Management Plan. The New England Fishery Management Council developed Framework 4 to further enhance catch monitoring and address discarding in the herring fishery. The approved measures include: A requirement that vessels report slippage (i.e., catch discarded prior to sampling by an observer) via the vessel monitoring system; slippage consequences measures (i.e., requirement to move 15 nautical miles (27.78 km) or return to port following a slippage event); and clarifications to existing slippage measures and definitions. NMFS disapproved two measures in Framework 4. These measures would have required: Fish holds to be certified and observers to collect volumetric catch estimates of total catch; and fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized law enforcement

officer. NMFS disapproved these measures because it determined that they are inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act, the Administrative Procedure Act, and the Paperwork Reduction Act. Therefore, those two measures are not implemented in this action. Lastly, NMFS implements minor corrections to regulations to clarify their intent and ensure they are consistent with the Atlantic Herring Fishery Management Plan.

DATES: Effective [*insert date 30 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: The New England Fishery Management Council (Council) developed an environmental assessment (EA) for this action that describes the proposed action and other considered alternatives and provides a thorough analysis of the impacts of the proposed measures and alternatives. Copies of the framework, the EA, and the Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available upon request from Thomas A. Nies, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950. The EA/RIR/IRFA is accessible via the Internet at www.greateratlantic.fisheries.noaa.gov.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to NMFS, Greater Atlantic Regional Fisheries Office and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen, Fishery Policy Analyst, phone 978- 281-9272, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

The Council adopted Framework Adjustment 4 to the Atlantic Herring Fishery Management Plan at its April 22, 2014, meeting. The Council submitted Framework 4 to NMFS for review on July 18, 2014, and resubmitted it to NMFS on February 27, 2015, and April 30, 2015. The proposed rule for Framework 4 published in the **Federal Register** on August 27, 2015 (80 FR 52005), with a 30-day public comment period that ended September 28, 2015. NMFS received four comment letters on the proposed rule.

NMFS implements approved measures in Framework 4 to the Atlantic Herring Fishery Management Plan (Herring FMP) and minor corrections to existing regulations in this final rule. The Council developed Framework 4 to build on catch monitoring improvements implemented in Amendment 5 to the Herring FMP (79 FR 8786, February 13, 2014) by further enhancing catch monitoring and addressing discarding in the herring fishery. The approved measures in Framework 4 clarify the slippage definition, require limited access herring vessels to report slippage events on the daily vessel monitoring system (VMS) catch report, and establish slippage consequences. Slippage consequence measures require vessels with All Areas (Category A) or Areas 2/3 (Category B) Limited Access Herring Permits to move 15 nautical miles (27.78 km) following an allowable slippage event (i.e., slippage due to safety, mechanical failure, or excess catch of spiny dogfish) and to terminate a fishing trip and return to port following a non-allowable slippage event (i.e., slippage for any other reason). NMFS also makes minor corrections to new and existing regulations. These revisions, identified and described below, are necessary to clarify current regulations or the intent of the Herring FMP, and do not change the

intent of any regulations.

NMFS disapproved two measures recommended by the Council in Framework 4. Those measures would have required: Herring vessel fish holds to be certified and observers to collect volumetric catch estimates on herring trips as a cross-check of vessel and dealer data; and herring vessel fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized law enforcement officer. During the development of Framework 4, NMFS expressed its concern with the lack of support for these two measures in Framework 4. Specifically, NMFS commented that these measures are not likely to improve catch monitoring, but they would result in compliance and enforcement costs. Despite NMFS urging, the Council did not include sufficient support for these two measures in Framework 4. Framework 4 does not provide evidence of specific problems with catch monitoring or discarding that need to be addressed, nor does it demonstrate how these recommended measures would rectify problems with monitoring or discarding. NMFS described its concern with these measures in the proposed rule, and explained that that they appear inconsistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law. Some public comments on the proposed rule expressed support for the approval and implementation of both measures, but the commenters did not provide evidence that the utility of these measures would outweigh costs. Therefore, NMFS determined that these two measures must be disapproved because they are inconsistent with the Magnuson-Stevens Act, the Administrative Procedure Act (APA), and the Paperwork Reduction Act (PRA).

Approved Measures

NMFS approves the following measures because it believes they will further enhance catch monitoring and address discarding in the herring fishery.

Clarification of Existing Slippage Measures

Framework 4 maintains the existing requirements that prohibit operational discards (i.e., small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations) aboard midwater trawl vessels fishing in the Groundfish Closed Areas and allow operational discards to occur on board herring vessels fishing outside the Groundfish Closed Areas. Current observer protocols include documenting operational discards and existing regulations require vessel operators to assist the observer with this process. Because it can be time and labor intensive to bring these small amounts of fish on board the vessel, the Council and NMFS believe that compliance costs associated with prohibiting operational discards outside the Groundfish Closed Areas would likely outweigh any benefits to the catch monitoring program and the herring resource.

Framework 4 clarifies that a slippage event due to safety, mechanical failure, or excess catch of spiny dogfish is categorized as an “allowable” slippage event and clarifies that slippage for any other reason is categorized as a “non-allowable” slippage event. The Council recommended these categories to help distinguish between slippage types and the triggers for slippage consequence measures.

Framework 4 clarifies that catch not brought on board due to gear damage would be categorized as mechanical failure and, therefore, as an allowable slippage event. Although a gear failure that results in the release of catch from a codend is often beyond the control of the vessel

operator, instances of catch released due to gear damage are similar to instances of catch released due to mechanical failure. Therefore, the Council and NMFS believe that catch released due to gear damage should be categorized as mechanical failure and an allowable slippage event. As an allowable slippage event, catch not brought on board due to gear damage would be subject to a slippage consequence measure.

Framework 4 clarifies that when catch that falls out of or off of gear and is not brought on board, the event would not be categorized as a slippage event. In general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel, unlike the potential for catch loss due to mechanical failure. Therefore, the Council and NMFS believe that fish that fall out of the gear should be categorized as discarded catch, but not slippage. For these reasons, instances of catch falling out or off of gear during fishing and/or when catch is being brought aboard the vessel would not be subject to existing slippage requirements or any slippage consequence measures.

Slippage Consequences

Building on the slippage restrictions established in Amendment 5, Framework 4 requires vessels to move following an allowable slippage event before resuming fishing. Specifically, vessels with Category A or B herring permits slipping catch due to safety, mechanical failure, or excess catch of spiny dogfish, are required to move at least 15 nautical miles (27.78 km) away from the slippage event location. The vessel is allowed to move 15 nautical miles (27.78 km) away in any direction, but it is prohibited from resuming fishing until it is at least 15 nautical miles (27.78 km) from the location of the allowable slippage event. Additionally, the vessel is

required to remain at least 15 nautical miles (27.78 km) from the slippage event location for the duration of that fishing trip. In addition to moving and remaining at least 15 nautical miles (27.78 km) away from an allowable slippage event, vessels with Category A or B herring permits fishing with midwater trawl gear in the Groundfish Closed Areas must leave the Groundfish Closed Areas and remain outside of the Groundfish Closed Areas for the remainder of the fishing trip following an allowable slippage event.

Framework 4 also requires trip termination for non-allowable slippage events. Specifically, vessels with Category A or B herring permits, including those fishing with midwater trawl gear in the Groundfish Closed Areas, that slip catch for any reason other than safety, mechanical failure, or excess catch of spiny dogfish, are required to immediately stop fishing and return to port. After having returned to port and terminated the fishing trip, vessels are allowed to initiate another fishing trip, consistent with the existing pre-trip notification requirements (e.g., contact the Northeast Fisheries Observer Program (NEFOP) to request an observer, vessel monitoring system (VMS) trip/gear declaration) for limited access vessels participating in the herring fishery.

NMFS is implementing slippage consequences for both allowable and non-allowable slippage events to further discourage slippage in the herring fishery and enhance the catch monitoring program established through Amendment 5. The herring fishery is a relatively high-volume fishery capable of catching large quantities of fish in a single tow. Therefore, even a few slippage events have the potential to substantially affect species composition data, especially extrapolations of incidental catch. Additionally, slippage is a significant concern for many

stakeholders because they believe it undermines the ability to collect unbiased estimates of herring catch, as well as other species, in the herring fishery. Stakeholders expressed support for the slippage consequence measures in Framework 4 to further ensure accountability for all catch in the herring fishery.

NMFS expects the requirement for vessels to move following slippage events will provide sufficient incentive for herring vessels to minimize slippage, while still promoting safety at sea and providing opportunities to utilize the herring optimum yield (OY). The requirement for vessels to move 15 nautical miles (27.78 km) following an allowable slippage event applies uniformly to all vessels that slip catch, unlike other considered alternatives (e.g., leaving a management area, leaving a statistical area) where the magnitude of the move would have depended upon the location of the allowable slippage event. NMFS expects that the requirement for vessels to move 15 nautical miles (27.78 km) following an allowable slippage event provides sufficient incentive (i.e., cost in time and fuel) for herring vessels to minimize slippage, and the requirement that vessels terminate their fishing trip and return to port following a non-allowable slippage event will further minimize slippage. NMFS believes that minimizing slippage events and better documentation of slipped catch may improve estimates of bycatch in the fishery. To the extent that the amount and species composition of slipped catch can be sampled and/or estimated, catch monitoring will be enhanced. To the extent that slippage events can continue to be reduced, bycatch can be further minimized.

The Mid-Atlantic Fishery Management Council recommended these same slippage consequences for allowable and non-allowable slippage events in the Atlantic mackerel fishery as

part of Framework 9 to the Atlantic Mackerel, Squid, and Butterfish FMP. Many vessels participate in both the herring and mackerel fisheries, and NMFS expects that implementing consistent slippage consequences across these fisheries will improve compliance and enforcement of slippage requirements.

Reporting Slippage Events

Framework 4 requires vessels with limited access herring permits to report slippage events, including the reason for the slippage event, via the herring daily VMS catch report. NMFS expects that this VMS report, in combination with observer data, will help enhance the enforceability of existing slippage requirements, such as completing a released catch affidavit, as well as the slippage consequences.

Clarifications and Corrections

This final rule also contains minor clarifications and corrections to existing regulations. NMFS implements these adjustments under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that framework adjustments to a FMPs are carried out in accordance with the FMP and the Magnuson-Stevens Act. These adjustments, identified and described below, are necessary to clarify current regulations and do not change the intent of any regulations.

NMFS is implementing a transiting provision for herring management areas with seasonal sub-ACLs. This provision allows vessels to transit herring management areas during periods when zero percent of the sub-ACL for those areas is available for harvest, with herring harvested from other herring management areas aboard, provided gear is stowed and not available for use.

NMFS overlooked this provision during rulemaking for Framework Adjustment 2 to the Herring FMP and the provision is consistent with the intent of that action and the Herring FMP. NMFS is removing regulations at § 648.80(d)(7) describing requirements for midwater trawl vessels fishing in Groundfish Closed Area I because they are redundant with regulations at § 648.202(b) describing requirements for midwater trawl vessels fishing in any of the Groundfish Closed Areas. NMFS is adding the definition of operational discards at § 648.2 and clarifying that operational discards are not permitted aboard midwater trawl vessels fishing in Groundfish Closed Areas, unless those fish have first been made available to an observer for sampling. NMFS is revising references to individual years in regulations for carryover at § 648.201 to more correctly describe the timing of carryover. Lastly, NMFS is correcting coordinates for Herring Management Area 2 at § 648.200(f)(2).

Disapproved Measures

NMFS disapproved the following measures because it determined they are inconsistent with the Magnuson-Stevens Act, APA, and PRA.

Volumetric Catch Estimates

Framework 4 would have required vessels with limited access herring permits to have their fish holds certified and NEFOP observers to collect volumetric estimates of total catch by measuring the volume of the fish in hold prior to offloading. Observers would have converted the volumetric estimate to a weight and submitted the estimated weight to the Greater Atlantic Region Fisheries Office (GARFO) for a cross-check of vessel trip reports (VTRs) and dealer reports. The requirement for observers to estimate the amount of catch in the fish hold was

intended to enhance catch monitoring in the herring fishery by providing an independent estimate of total catch.

This measure was developed to address stakeholder concerns with NMFS's reliance on industry-reported catch data to monitor the herring fishery. Specifically, some stakeholders, including environmental organizations, the groundfish industry, and recreational fishing groups, believe that herring catch is not accurately reported by the industry and that large discrepancies exist between vessel and dealer reports. The herring industry, in general, does not believe that herring catch is being misreported but, in an effort to address stakeholder concerns, supports the requirement for observers to collect an estimate of total catch.

Framework 4 does not provide evidence of misreporting by the herring industry, but it does highlight past differences, that have since been minimized, between the amount of herring reported by vessels and dealers. In past years, discrepancies between VTRs and dealer data have been as large as 54 percent. But recently, GARFO staff has improved the process for cross-checking and resolving differences between VTRs and dealer data. Now discrepancies between VTRs and dealer data are minimal, with differences averaging 1 percent. Because discrepancies between VTRs and dealer data are now minimal, NMFS does not believe that the proposed measure requiring volumetric estimates of total catch is necessary to help resolve discrepancies between VTR and dealer data.

Vessels and dealers report catch by species. VTRs, in combination with observer data, are used in herring stock assessments, while a combination of dealer data, VTR, and VMS, and

observer data are used to track catch against herring annual catch limits and catch caps in the herring fishery. The measure requiring volumetric catch estimates would have provided an estimate of total catch, but would not have differentiated catch by species. Because the volumetric estimate would not have provided catch by species, it could not have been used to replace VTRs or dealer data nor could it have been used for catch monitoring or stock assessments.

Additionally, Framework 4 cautions whether the proposed measure would be more accurate than methods currently used by vessel operators or dealers to estimate catch. The volumetric conversion proposed in Framework 4 is based on herring harvested in other parts of the world. Using a volumetric conversion assumes consistency in the size, weight, and density of the catch, but there can be substantial variability in the catch composition of the herring fishery, depending on the area and season. Additionally, the proposed 5 percent deduction from total weight to account for water in the tanks is based on industry practices, but the Council did not rigorously evaluate the amount of the deduction. For these reasons, Framework 4 explains that converting a volume of total fish to pounds based on the proposed conversion could produce less accurate catch estimates than current vessel or dealer estimates.

The measure requiring a volumetric catch estimate is unlikely to improve catch monitoring in the herring fishery because that estimate cannot be used to replace VTR or dealer report to monitor catch and it is not necessary to resolve minimal discrepancies between VTR and dealer data. In contrast, the compliance costs associated with the measure may be high. If a vessel's fish holds are not already certified, the vessel owner would need to pay to have the fish

holds certified. NMFS would need to significantly develop the measure prior to implementation, including generating a sampling protocol, approving volume to weight conversions and deductions to account for water in the fish hold, training observers, and evaluating how to use the data. Additionally, requiring observers to sample vessels in port would require modifications to the description of observer duties and contracts with observer service providers.

For these reasons, NMFS concluded that the measure requiring fish holds to be certified and observers to collect volumetric catch estimates is inconsistent with the requirements of the Magnuson-Stevens Act, APA, and PRA. The measure is inconsistent with the APA because there is insufficient support in Framework 4 documenting the need for this measure and how this measure would address the purported need. The measure is inconsistent with the requirements of Magnuson-Stevens Act National Standard 7 and the PRA because the benefit of the volumetric catch estimate is dubious and does not outweigh the additional burden on vessel owners of certifying their fish holds and making available a measuring stick for observers. The measure is inconsistent with Magnuson-Stevens Act National Standard 2 because the quality of the volumetric catch estimate is not sufficient for monitoring the fishery, facilitating inseason management, or judging the performance of the management regime. Finally, the measure is inconsistent with Magnuson-Stevens Act National Standard 5 because it does not allow the fishery to operate at the lowest possible administrative costs relative to any additional monitoring benefit provided by the measure.

Empty Fish Holds

Framework 4 would have required fish holds of vessels with Category A or B Limited

Access Herring Permits to be empty of fish before leaving the dock on a herring trip. A waiver may have been issued by an authorized law enforcement officer when fish have been reported as caught but cannot be sold due to the condition of fish.

The Council recommended this measure to enhance catch monitoring and discourage wasteful fishing practices in the herring fishery. Some stakeholders are concerned that vessels are harvesting more fish than they can sell and then discarding the unsold fish on subsequent fishing trips. These stakeholders are also concerned that fish not purchased by a dealer, and discarded on subsequent trips, may not be reported on the VTR. The Council intended this measure to discourage the discarding of unreported fish, provide a mechanism to document when harvested fish become unmarketable, and prevent vessel operators from mixing fish from multiple trips in the hold, potentially biasing catch data.

While prohibiting the disposal of unsold fish at sea may discourage wasteful fishing practices, there is insufficient support in the record to conclude that herring vessels are harvesting excess fish and discarding unsold fish at sea. The costs associated with a herring trip, including fuel, crew wages, and insurance, are substantial, so it is unlikely that vessel operators are making herring trips to harvest fish that will ultimately be discarded. Additionally, if discarding of unsold fish at sea is occurring, Framework 4 explains that it is unclear whether unsold catch disposed of at sea on a subsequent trip is reported.

Initially, this measure requiring empty fish holds simply required that fish holds be empty of fish at the beginning of a herring trip. But recognizing that there may be unforeseen events making it difficult to sell fish (e.g., refrigeration failure, poor condition, lack of market), the

Council recommended the waiver provision to mitigate the potential costs associated with disposing of unmarketable catch on land. The Council intended the waiver to provide a mechanism to verify that fish had been reported and document the nature and extent to which vessels are departing on trips with fish in their fish holds. Additionally, some vessels in the herring fishery land their catch in multiple ports, and the Council intended that the waiver provision would allow that practice to continue.

Part of the justification for the waiver provision is to provide a way to verify that fish have been reported and to document the extent to which vessels are departing on trips with fish in their fish holds. However, Framework 4's proposed waiver provides no way of verifying the amount of fish reported relative to the amount of fish left in the hold. Therefore, NMFS does not believe that this measure contains a viable mechanism to verify whether harvested fish that are left in the hold were reported by the vessel.

Because the measure lacks a mechanism to verify or correct the amount of fish reported on the VTR, the measure is unlikely to improve catch monitoring in the herring fishery. In contrast, the compliance and enforcement costs associated with the measure may be high. For example, vessel operators needing to dispose of fish at sea may lose time and money waiting for an authorized law enforcement officer to travel to their vessel, inspect the fish in the fish hold, and issue a waiver. Additionally, it would likely be time consuming for authorized officers to issue waivers and would divert resources from other law enforcement duties.

This measure is also intended to prevent vessel operators from mixing catch from multiple trips in the hold and biasing catch data. NEFOP observers sample the catch while it is

on the deck, before it is placed in the fish hold, so there would be no chance that observers would be sampling fish from multiple trips that were mixed in the hold. The herring fishery is also sampled portside by the Massachusetts' Department of Marine Fisheries (MA DMF) and Maine's Department of Marine Resources. Mixing of catch from multiple fishing trips, although unlikely, may have the potential to bias landings data used to inform herring stock assessments, state management spawning closures, and the river herring avoidance program operated by the University of Massachusetts' School of Marine Fisheries and MA DMF.

The Atlantic States Marine Fisheries Commission recently adopted a requirement that vessel fish holds be empty of fish before vessels depart on a herring trip, contingent on adoption in Federal waters, in Amendment 3 to the Interstate FMP for Atlantic Herring. Establishing a similar provision in this action would have promoted coordination between Federal and state management, but, for the reasons described above, it is unlikely to improve catch monitoring in the herring fishery.

For these reasons, NMFS concluded that the measure requiring fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized officer, is inconsistent with the requirements of the Magnuson-Stevens Act, APA, and PRA. The measure is inconsistent with the APA because there is insufficient support in Framework 4 documenting the need for this measure and how this measure would address the purported need. The measure is inconsistent with Magnuson-Stevens Act National Standard 7 and the PRA because the benefit of requiring empty fish holds when departing on a herring trip does not outweigh the additional reporting burden on vessel operators to request and obtain a waiver from an authorized officer. The

measure is inconsistent with Magnuson-Stevens Act National Standard 7 because it does not provide fishermen with the greatest possible freedom of action in conducting business and imposes an unnecessary enforcement burden. Finally, the measure is inconsistent with Magnuson-Stevens Act National Standard 5 because it does not allow the fishery to operate at the lowest possible administrative and enforcement costs relative to any additional monitoring benefit provided by the measure.

Comments and Responses

NMFS received four comment letters on the proposed rule. Two letters were from environmental advocacy groups (Herring Alliance and CHOIR (Coalition for the Atlantic Herring Fishery's Orderly, Informed, and Responsible Long Term Development)) and two letters were from herring industry groups (Seafreeze Ltd. and the Sustainable Fisheries Coalition).

Comment 1: The Herring Alliance supports proposed measures in Framework 4 that would clarify the slippage definition and require slippage to be reported via the daily VMS catch report.

Response: NMFS is implementing measures to clarify the slippage definition and require slippage to be reporting via the daily VMS catch report.

Comment 2: CHOIR expressed concern with the potential for increased discarding of unsampled catch associated with the clarifications to existing slippage measures that allow for operational discards and catch that falls out of or off gear. Despite its concern, CHOIR supports the proposed clarifications to existing slippage measures, because it believes that the proposed slippage consequence measures will drastically improve management of herring fishery.

Response: NMFS agrees with CHOIR that slippage consequence measures will likely improve management of the herring fishery, but disagrees with CHOIR that continuing to allow for operational discards and fish that fall out of or off gear would increase the discarding of unsampled catch.

Framework 4 maintains the existing requirements that prohibit operational discards aboard midwater trawl vessels fishing in the Groundfish Closed Areas, but allows operational discards to occur on board herring vessels fishing outside the Groundfish Closed Areas. Framework 4 clarifies that operational discards are small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Current observer protocols include estimating the amount and composition of operational discards. Because the fish cannot be pumped, it can be time and labor intensive to bring these small amounts of fish on board the vessel. There is no evidence in Framework 4 to suggest that continuing to allow operational discards would increase the discarding of unsampled catch. Rather, Framework 4 concludes that the compliance costs associated with requiring herring vessels fishing outside the Groundfish Closed Areas to bring operational discards on board would likely outweigh any benefits to the catch monitoring program and the herring resource.

Framework 4 clarifies that catch that falls out of or off of gear and is not brought on board would be categorized as discarded catch, but not slippage. In general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel, unlike the potential for catch loss due to mechanical failure. It would be very difficult for vessels to retrieve the small amounts of fish that fall out of or off gear and bring those fish on

board the vessel. Again, there is no evidence in Framework 4 suggesting that this measure would increase the discarding of unsampled catch and the compliance costs associated with requiring these fish be brought on board the vessel for sampling would likely outweigh any benefit to herring catch monitoring.

Comment 3: The Sustainable Fisheries Coalition supports minor clarifications and corrections to existing measures because it believes they are not a substantive change to current regulations and are consistent with the Herring FMP. The Sustainable Fisheries Coalition also supports categorizing catch not brought on board due to gear damage as an allowable slippage event and catch that falls out of or off gear as a discard event. The Sustainable Fisheries Coalition supports continuing to allow operational discards in the herring fishery, except on board herring vessels fishing in the Groundfish Closed Areas, noting that the costs of prohibiting operational discards would likely outweigh any benefits. Lastly, the Sustainable Fisheries Coalition has no objection to the proposed requirement to report slippage via the VMS daily catch report.

Response: NMFS agrees with the Sustainable Fisheries Coalition and the measures implemented in this final rule are consistent with the Sustainable Fisheries Coalition recommendations.

Comment 4: The Sustainable Fisheries Coalition supports including the definition of operational discards in the regulations, but suggests that the operational discards definition, as well as the slippage definition, be revised to acknowledge that releasing small amounts of fish from the codend or seine at the end of pumping operations is also operationally discarding catch.

Response: This final rule adds the definition of operational discards to regulations at § 648.2. Operational discards are defined as small amounts of fish that cannot be pumped on board the vessel and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or seine at the end of pumping operations is operationally discarding catch. This final rule also categorizes instances of catch falling out or off of gear during fishing and/or when catch is being brought aboard the vessel as discarding, rather than slippage. Framework 4 explains that, in general, only small amounts of catch fall out or off of gear during fishing and/or when catch is being brought aboard the vessel. NMFS believes that categorizing catch that falls out of gear as discarding addresses the Sustainable Fisheries Coalition's recommendation to acknowledge releasing small amounts of fish from the codend or seine at the end of pumping operations is a discard event and not slippage.

Comment 5: CHOIR and the Herring Alliance support the proposed slippage consequence measures. CHOIR commented that proposed slippage consequence measures are vital to provide vessels with incentive to avoid slippage and the Herring Alliance commented that the proposed slippage consequence measures are reasonable, safe, and necessary to further deter slippage events on observed trips.

Response: NMFS is implementing the slippage consequence measures to help improve catch monitoring and further deter slippage in the herring fishery.

Comment 6: Seafreeze Ltd. and the Sustainable Fisheries Coalition do not support the proposed measure requiring vessels to move and remain at least 15 nautical miles (27.78 km) away from an allowable slippage event for the duration of that fishing trip.

Seafreeze Ltd. and the Sustainable Fisheries Coalition commented that because no scientific analysis supports the requirement to move 15 nautical miles (27.78 km), the measure is inconsistent with the requirement that measures be based on the best available science. Seafreeze Ltd. noted that fishing effort is often already spatially limited by regulations, oceanographic features, or fish distribution. Both Seafreeze Ltd. and the Sustainable Fisheries Coalition commented that requiring vessels to move 15 nautical miles (27.78 km) following an allowable slippage event may result in lost fishing opportunities and will not rectify the problem that caused the slippage event. Additionally, the Sustainable Fisheries Coalition commented that the measure raises concerns with the ability of the herring fleet to achieve the herring OY, the need to minimize adverse impacts on fishing communities, and the measure having a limited conservation benefit as bycatch has already been minimized to the extent practicable.

Seafreeze Ltd. noted that as spiny dogfish populations continue to increase, herring fishery interactions with dogfish will also likely increase. Seafreeze Ltd. also noted that vessels typically move from an area following interactions with dogfish, but they do not move as far as 15 nautical miles (27.78 km).

Seafreeze Ltd. and the Sustainable Fisheries Coalition commented that needing to slip catch for safety or mechanical failure is often beyond the control of the vessel operator. Seafreeze Ltd. also commented that requiring vessels to move 15 nautical miles (27.78 km) following allowable slippage events may pressure vessel operators to possibly engage in unsafe fishing practices to avoid a penalty. Additionally, Seafreeze Ltd. commented that penalizing a vessel for safety concerns violates National Standard 10.

Lastly, Seafreeze Ltd. commented that its bottom trawl vessels have higher observer coverage rates than other gear types participating in the herring fishery and would, therefore, be disproportionately impacted by the proposed slippage consequence measure following an allowable slippage event.

Response: NMFS disagrees with Seafreeze Ltd. and the Sustainable Fisheries Coalition that the slippage consequence measure requiring vessels to move and remain at least 15 nautical miles (27.78 km) away from an allowable slippage event for the duration of that fishing trip should not be approved.

NMFS anticipates this slippage consequence measure will address concerns about bycatch and slippage by discouraging the occurrence of slippage throughout the fishery, while continuing to promote safe and efficient fishing practices on vessels participating in the herring fishery. Safety is an important consideration for all fishery management plans and Framework 4 acknowledges that slippage events due to safety concerns or mechanical failure may be beyond the control of the vessel operator. NMFS expects the requirement to move 15 nautical miles (27.78 km) following an allowable slippage event will accommodate any safety concerns because it allows vessels to continue fishing, when it is safe to do so, rather than requiring trip termination.

NMFS also expects that this slippage consequence measure will enhance the catch monitoring program established through Amendment 5 by further discouraging slippage in the herring fishery. The requirement for a vessel to move following an allowable slippage event is not based on the biology or distribution of a fish species, like the Groundfish Closed Areas, nor

is it intended to rectify mechanical failures, unsafe weather conditions, or encounters with spiny dogfish. Instead, the measure was based on an analysis evaluating the distances vessels move during fishing operations and is intended to provide sufficient incentive (i.e., cost in time and fuel) for herring vessels to minimize slippage, while providing opportunities to utilize the herring OY. Options for moving 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km) were also considered in Framework 4, but the 15-nautical mile (27.78-km) option was recommended by the Council because 15 nautical miles (27.78 km) is the median value between 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km). Additionally, this measure applies uniformly to all vessels that slip catch, unlike other considered alternatives (e.g., leaving a management area, leaving a statistical area) in Framework 4 where the magnitude of the move would have depended upon the location of the allowable slippage event.

Framework 4 describes the impact of this slippage consequence measure as a low negative for the herring industry. This impact is not related to safety concerns, but to the potential for lost time and money associated with moving following an allowable slippage event. Analyses in Framework 4 show that midwater trawl and purse seine vessels participating in the herring fishery have the potential to be most affected by the requirement to move following an allowable slippage event. Small mesh bottom trawl vessels are expected to be least affected by the move requirement because documented slippage events by those vessels are low.

NMFS implemented this same slippage consequence measure in the mackerel fishery as part of the measures recommended by the Mid-Atlantic Fishery Management Council in Framework 9 to the MSB FMP. Many vessels participate in both the herring and mackerel

fisheries, and NMFS expects that implementing consistent slippage consequences across these fisheries will improve compliance and enforcement of slippage measures.

Comment 7: The Sustainable Fisheries Coalition supports the proposed measure requiring vessels to terminate a fishing trip and return to port following a non-allowable slippage event. With the exception of the allowable slippage events, the Sustainable Fisheries Coalition commented that vessels should be able to bring catch aboard and make it available to the observer for sampling. The Sustainable Fisheries Coalition noted that if the condition of the fish results in catch being unmarketable, those fish would be discarded after they were sampled by the observer.

Response: NMFS is implementing the requirement to terminate a fishing trip and return to port following a non-allowable slippage event.

Comment 8: CHOIR and the Herring Alliance support the measure requiring vessel fish holds to be certified and NEFOP observers to collect volumetric estimates of total catch. CHOIR noted that the volumetric catch estimate is especially important to confirm industry catch reports, given past instances of misreporting and when vessels and dealers both work for the same company. Even if observers only sporadically collected catch estimates, CHOIR commented that having a mechanism to confirm catch reports could improve catch reporting. Herring Alliance commented that third-party catch verification is needed to ensure industry catch reports are accurate, complete, and credible and that catch limits are not exceeded. The Herring Alliance explained that accurate landings data will improve stock assessments and aid in monitoring fishery catch caps. Additionally, the Herring Alliance noted that logistical and operational

challenges associated with observers collecting volumetric estimates of catch, such as modifying the description of observer duties and contracts with observer service providers to require observers to sample vessels in port, are solvable.

Response: NMFS agrees with the Herring Alliance that it is possible to make the necessary programmatic changes to enable observers to collect volumetric estimates in port, but disagrees with CHOIR and the Herring Alliance that the proposed volumetric catch estimate is a cost-effective measure that is necessary to confirm industry catch reports and will improve catch reporting and stock assessments.

Vessels and dealers report catch by species. VTRs, in combination with observer data, are used in herring stock assessments, while a combination of dealer data, VTR, and VMS, and observer data are used to track catch against herring annual catch limits and catch caps in the herring fishery. The proposed measure would provide an estimate of total catch, but not catch by species. Therefore, the volumetric estimate could not be used to replace either VTRs or dealer data and it could not be used for catch monitoring or stock assessments.

Framework 4 does not provide evidence of misreporting by the herring industry, but it does highlight past differences, that have since been minimized, between the amount of herring reported by vessels and dealers. In recent years, discrepancies between VTRs and dealer data have been minimal. VTRs were higher than dealer reports in 2009 (2 percent), 2010 (1.3 percent), 2011 (1.2 percent), and 2013 (0.1 percent) and less than dealer reports in 2012 (0.1 percent). GARFO staff use a rigorous process to match vessel and dealer reported data and make corrections to the appropriate data set. Given that discrepancies between VTR and dealer data

are minimal as well as investigated and resolved, NMFS does not consider the proposed volumetric catch estimate necessary to help identify or resolve discrepancies between VTR and dealer data.

NMFS disapproved the requirement for volumetric catch estimates because it considers the measure inconsistent with the Magnusson-Stevens Act, APA, and PRA.

Comment 9: Seafreeze Ltd. does not support the proposed measure requiring fish holds to be certified and NEFOP observers to collect volumetric estimates of total catch. The Sustainable Fisheries Coalition noted that its members did not reach a consensus whether the volumetric catch estimate should be approved or disapproved, but it expressed concern with the potential inaccuracies associated with the proposed measure. Additionally, the Sustainable Fisheries Coalition recommended that if the proposed measure was implemented, that it only apply to vessels whose fish holds had already been certified to help minimize vessel compliance costs. Seafreeze Ltd. also questioned the accuracy of the proposed volumetric estimates and expressed concern that the proposed measure would increase observer workload. Seafreeze Ltd. commented that because discrepancies between vessel and dealer reports are minimal, the proposed measure is not warranted. Lastly, Seafreeze Ltd. noted that the proposed measure would not be applicable to the Seafreeze Ltd. vessels that offload frozen product.

Response: NMFS shares Seafreeze Ltd.'s and the Sustainable Fisheries Coalition's concern with the accuracy of the proposed volumetric catch estimates and disapproved this measure in Framework 4. The volumetric conversions proposed in Framework 4 are based on herring harvested in other parts of the world. Using a volumetric conversion assumes

consistency in the size, weight, and density of the catch, but there can be substantial variability in the catch composition of the herring fishery, depending on the area and season. Additionally, the proposed 5 percent deduction from total weight to account for water in the tanks is based on industry practices, but the Council did not rigorously evaluate the amount of the deduction. For these reasons, Framework 4 questioned whether the proposed measure would be more accurate than methods currently used by vessel operators or dealers to estimate catch.

NMFS agrees with Seafreeze Ltd. that requiring observers to collect volumetric catch estimates would increase observer workload and that discrepancies between vessel and dealer reports are minimal. As described previously, volumetric estimates could not be used to replace either VTRs or dealer data and it could not be used for catch monitoring or stock assessments. Increasing observer workload with duties that are unlikely to improve herring catch monitoring is not an effective use of NMFS resources. As described previously, NMFS does not consider the proposed volumetric catch estimate necessary to help identify or resolve the minimal discrepancies between VTR and dealer data.

Lastly, the measure, as proposed, would have required all vessels with limited access herring permits to have their fish holds certified and observers to collect volumetric catch estimates. Limiting the measure to only apply to vessels whose fish holds had already been certified would have meant substantially revising the measure. NMFS can only approve or disapprove a proposed measure; therefore, NMFS cannot revise the measure to only apply to vessels whose fish holds have already been certified.

Comment 10: CHOIR and Herring Alliance support the proposed measure requiring fish

holds to be empty of fish before a vessel departs on a herring trip, unless a waiver has been issued. CHOIR expressed concern with the perceived practice of fish being harvested without a confirmed buyer and unsold fish being discarded at sea, especially when discarded fish may not have been reported. CHOIR surmised that requiring empty fish holds would likely ensure that vessels do not harvest excess fish or discard unsold fish at sea.

Response: The proposed measure requiring empty fish holds was intended to enhance catch monitoring and discourage wasteful fishing practices in the herring fishery. While prohibiting the disposal of unsold fish at sea may discourage wasteful fishing practices, there is insufficient support in the record to conclude that herring vessels are harvesting excess fish and discarding unsold fish at sea. The costs associated with a herring trip, including fuel, crew wages, and insurance, are substantial, so it is unlikely that vessel operators are making herring trips to harvest fish that will ultimately be discarded. Additionally, if discarding of unsold fish at sea is occurring, Framework 4 explains that it is unclear whether unsold catch disposed of at sea on a subsequent trip is reported.

Part of the justification for the waiver provision is to provide a way to verify that fish have been reported and document the extent to which vessels are departing on trips with fish in their fish holds. However, Framework 4's proposed waiver provides no way of verifying the amount of fish reported relative to the amount of fish left in the hold. Therefore, NMFS does not believe this measure contains a viable mechanism to verify whether harvested fish that are left in the hold were reported by the vessel and is unlikely to improve catch monitoring in the herring fishery.

NMFS disapproved the requirement for empty fish holds because it considers the measure inconsistent with the Magnusson-Stevens Act, APA, and PRA.

Comment 11: Seafreeze Ltd. does not support the proposed measure requiring fish holds to be empty of fish before a vessel departs on a herring trip. Seafreeze Ltd. noted that its processing vessels produce a frozen, processed product that would not be discarded at sea. Additionally, Seafreeze Ltd. noted that fish cannot be pumped out of the fish hold of its harvesting vessel at sea, only in port. For these reasons, Seafreeze Ltd. commented that this measure is not applicable to its vessels and would impact the vessels unnecessarily.

Response: NMFS disapproved this measure in Framework 4, so the application to frozen fish is not relevant. However, had NMFS approved the measure, it would not have applied to a frozen product or fish stored in freezers.

Comment 12: The Sustainable Fisheries Coalition did not have consensus whether the empty fish hold requirement should be approved or disapproved, but it commented that Framework 4 does not provide evidence of the misreporting and wasteful fishing practices that the empty fish hold requirement is intended to rectify. The Sustainable Fisheries Coalition noted that rarely does a vessel leave port with fish in its hold unless it is offloading at multiple locations, storing fish for which there is no immediate market, or disposing of poor quality fish. Given the absence of a clearly documented problem, the Sustainable Fisheries Coalition commented that the cost of delaying a trip to obtain a waiver, in order to depart on a herring trip with fish in the hold, would be a hardship.

Response: As described previously, there is insufficient evidence in Framework 4 to

support claims of misreporting and wasteful fishing practices. Additionally, because the proposed measure lacks a mechanism to verify or correct the amount of fish reported on the VTR, the proposed measure is unlikely to improve catch monitoring in the herring fishery. In contrast, the compliance and enforcement costs associated with the proposed measure may be high. For example, vessel operators needing to dispose of fish at sea may lose time and money waiting for an authorized law enforcement officer to travel to their vessel, inspect the fish hold, and issue a waiver. Additionally, it would likely be time consuming for authorized officers to issue waivers and would divert resources from other law enforcement duties.

Comment 13: The Herring Alliance and CHOIR also commented on initiatives to increase monitoring in the herring fishery that are related to this action, but are outside the scope of measures considered and approved as part of Framework 4. Specifically, the commenters recommended that slippage consequence measures should apply if electronic monitoring is to be used to monitor the herring fishery and that NMFS should provide reasonable cost estimates for electronic monitoring as soon as possible to prevent a delay in allowing industry-funded monitoring to increase monitoring of the herring fishery.

Response: NMFS is working with the Council to develop measures related to these issues. Although NMFS understands the connection between these measures and slippage consequence measures established in this action, these additional initiatives are outside the scope of Framework 4.

Changes from the Proposed Rule

The proposed rule for Framework 4 contained all the measures in that were adopted by

the Council in April 2014. As described previously, NMFS disapproved the measures requiring fish holds to be certified and observers to collect volumetric catch estimates, and fish holds to be empty of fish before leaving port, unless a waiver is issued by an authorized law enforcement officer. Thus, the regulatory requirements associated with those two measures are not included in this final rule. Specifically, the following sections from the proposed rule have been removed:

§§ 648.4(a)(10)(iv)(P), 648.11 (m)(5), 648.14(r)(1)(ii)(D), 648.14(r)(2)(xiii), and 648.204(c) are not being implemented in this rule. Additionally, proposed § 648.11(m)(3)(ii) was revised to remove provisions related to providing an observer with a NMFS-approved measuring stick when requested.

This final rule also contains minor clarifications to the slippage definition, slippage reporting requirements, and slippage consequence measures to ensure consistency with slippage requirements for the Atlantic mackerel fishery. Specifically, the following sections have been revised: §§ 648.2, 648.11(m)(4)(C)(iv), and 648.14(r)(2)(vii), (xi), and (xii). Many vessels participate in both the herring and mackerel fisheries and NMFS expects that implementing consistent requirements across these fisheries will improve compliance and enforcement of slippage requirements. NMFS is revising the regulations under the authority of section 305(d) to the Magnuson-Stevens Act, which provides that the Secretary of Commerce may promulgate regulations necessary to ensure that framework adjustments to FMPs are carried out in accordance with the FMP and the Magnuson-Stevens Act.

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is

consistent with the national standards and other provisions of the Magnuson-Stevens Act and other applicable laws.

The Office of Management and Budget has determined that this rule is not significant according to Executive Order 12866.

This final rule does not contain policies with federalism or “takings” implications, as those terms are defined in E.O. 13132 and E.O. 12630, respectively.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act (RFA), has completed a final regulatory flexibility analysis (FRFA) in support of Framework 4 in this final rule. The FRFA incorporates the IRFA, a summary of the significant issues raised by the public comments in response to the IRFA, NMFS responses to those comments, a summary of the analyses completed in the Framework 4 EA, and this portion of the preamble. A summary of the IRFA was published in the proposed rule for this action and is not repeated here. A description of why this action was considered, the objectives of, and the legal basis for this rule is contained in Framework 4 and in the preamble to the proposed and this final rule, and is not repeated here. All of the documents that constitute the FRFA are available from NMFS and a copy of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**) or via the Internet at www.greateratlantic.fisheries.noaa.gov.

Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Agency’s Assessment of Such Issues, and a Statement of Any Changes Made in the Final Rule as a Result of Such Comments

NMFS received four comment letters on the proposed rule. Those comments, and

NMFS' responses, are contained in the Comments and Responses section of this final rule and are not repeated here. None of the comments addressed the IRFA and NMFS did not make any changes in the final rule based on public comment.

Description and Estimate of Number of Small Entities to Which the Rule Would Apply

This action regulates the activity of vessels with limited access herring permits and vessels with Category A or B limited access herring permits. Therefore, the regulated entity is the business that owns at least one limited access herring permit.

In 2013, the most recent full year of fishery permit data, 93 fishing vessels were issued a limited access herring permit. Vessels and/or permits may be owned by entities affiliated by stock ownership, common management, identity of interest, contractual relationships, or economic dependency. For the purposes of this analysis, ownership entities are defined as those entities with common ownership personnel as listed on permit application documentation. Only permits with identical ownership personnel are categorized as an affiliated entity. For example, if five permits have the same seven personnel listed as co-owners on their application paperwork, those seven personnel form one ownership entity, covering those five permits. If one or several of the seven owners also own additional vessels, with sub-sets of the original seven personnel or with new co-owners, those ownership arrangements are deemed to be separate entities for the purpose of this analysis.

Based on this ownership criterion, NMFS dealer data for recent years (2010-2013), and the size standards for finfish and shellfish firms, there are 68 regulated fishing firms with a limited access herring permit. Of those 68 firms, there are 61 small entities and 7 large entities.

Not all of these permitted firms are active: Only 32 small entities and 5 large entities were actively fishing for herring during the last 3 years. Additionally, there are 32 regulated fishing firms that hold Category A or B herring permits. Of those 32 firms, there are 27 small entities and 5 large entities. Not all of these permitted firms are active: Only 19 small entities and 5 large entities holding Category A or B herring permits were actively fishing for herring during the last 3 years.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This final rule contains collection-of-information requirements subject to the PRA that have been approved by the OMB under Control Number 0648-0202.

This action requires all limited access vessels to report slippage events via the daily VMS herring catch report. This information is intended to improve catch monitoring in the herring fishery. All limited access herring vessels are currently required to submit daily VMS catch reports, therefore, reporting slippage via VMS is not expected to cause any additional time or cost burden above that which was previously approved under OMB Control Number 0648-0202. Time burdens that were previously approved through OMB Control Number 0648-0202 include an estimated burden of 5 minutes to complete daily catch reports, with an additional 2 minutes if the vessel is also reporting all fish kept, and a total burden of 429 hours. Cost burdens that were previously approved through OMB Control Number 0648-0202 include an estimated burden of \$0.60 per transmission of daily catch reports and a total burden of \$2,323. In a given fishing year, NMFS estimates that the additional reporting requirements included in Framework 4 will not cause any additional time or cost burden from that which was previously approved. Send

comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to OIRA_Submission@omb.eop.gov, or fax to (202) 395-7285.

Notwithstanding any other provisions of the law, no person is required to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number. All currently approved NOAA collections of information may be viewed at: http://www.cio.noaa.gov/services_programs/prasubs.html.

Description of the Steps the Agency Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes

NMFS disapproved two measures in Framework 4 because it determined the measures were inconsistent with the Magnuson-Stevens Act, APA, and PRA.

One of the disapproved measures in Framework 4 would have required owners of vessels with limited access herring permits to certify the capacity of their fish holds and purchase and carry a NMFS-approved measuring stick to estimate the volume of fish in the fish hold. Each fish hold certification done by a certified marine surveyor is estimated to cost \$300-\$400. The cost of the NMFS-approved measuring stick is unknown at this time, but expected to be minimal. Ninety-three vessels were issued a limited access herring permit in 2013. Therefore, an estimated 93 vessels would have been required to submit a fish hold certification at the time of permit issuance in 2016 and obtain and carry on board a NMFS-approved measuring stick. By disapproving this measure, vessel owners will not incur the costs associated with this measure.

The other disapproved measure in Framework 4 would have required vessels with Category A or B herring permits to have fish holds empty of fish prior to departing on a herring trip. A waiver may have been issued by an authorized law enforcement officer when fish had been reported as caught but could not be sold due to condition. Forty-three vessels were issued a Category A or B herring permit in 2013. Therefore, an estimated 43 vessels would have been required to obtain a waiver from an authorized officer prior to leaving the dock on a herring trip with fish in the hold. The burden to the vessel operator/owner associated with obtaining a waiver would be any loss of time and/or money waiting for an authorized officer to travel to their vessel, inspect the fish hold, and issue a waiver. By disapproving this measure, vessel owners will not incur the burden associated with this measure.

NMFS is implementing slippage consequence measures for vessels with Category A and B herring permits in this rule, including requirements to move 15 nautical miles (27.78 km) following an allowable slippage event and terminate a trip following a non-allowable slippage event. Because non-allowable slippage events are already prohibited in the herring fishery, NMFS expects that instances of vessels terminating a trip and returning to port following a non-allowable slippage event will be rare. Therefore, the requirement to terminate a trip following a non-allowable slippage event will not have a significant economic impact on vessels with Category A and B herring permits. NMFS also expects that the requirement to move 15 nautical miles (27.78 km) following an allowable slippage event will also not have a significant economic impact on Category A and B vessels. The measure is based on an analysis evaluating the distances vessels move during fishing operations and is intended to provide sufficient incentive (i.e., cost in time

and fuel) for herring vessels to minimize slippage, while still promoting safety at sea and maximizing opportunities to utilize the herring OY. Options for moving 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km) were also considered in Framework 4, but the 15-nautical mile (27.78-km) option is being implemented because 15 nautical miles (27.78 km) is the median value between 10 nautical miles (16.09 km) and 20 nautical miles (32.19 km). Additionally, this measure applies uniformly to all vessels that slip catch, unlike other considered alternatives (e.g., leaving a management area, leaving a statistical area) in Framework 4 where the magnitude of the move, and resulting economic impacts, would have depended upon the location of the allowable slippage event.

This rule also implements clarifications and minor corrections to existing regulations. These clarifications and minor corrections are intended to clarify existing slippage measures; allow vessels to transit herring management areas during periods when zero percent of the sub-ACL for those areas is available for harvest, provided gear was stowed and not available for use; and correcting coordinates for Herring Management Area 2 to more accurately define the area. NMFS expects these clarifications and corrections to facilitate operation of the herring fishery.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Recordkeeping and reporting requirements.

Dated: March 29, 2016

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648--FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for “Slippage in the Atlantic herring fishery” is removed and the definitions for “Operational discards in the Atlantic herring fishery” and “Slip(s) or slipping catch in the Atlantic herring fishery” are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Operational discards in the Atlantic herring fishery means small amounts of fish that cannot be pumped on board and remain in the codend or seine at the end of pumping operations. Leaving small amounts of fish in the codend or seine at the end of pumping operations is operationally discarding catch.

* * * * *

Slip(s) or slipping catch in the Atlantic herring fishery means discarded catch from a vessel issued an Atlantic herring permit that is carrying a NMFS-approved observer prior to the catch being brought on board or prior to the catch being made available for sampling and

inspection by a NMFS-approved observer after the catch is on board. Slip(s) or slipping catch includes releasing fish from a codend or seine prior to the completion of pumping the fish on board and the release of fish from a codend or seine while the codend or seine is in the water. Slippage or slipped catch refers to fish that are slipped. Slippage or slipped catch does not include operational discards, discards that occur after the catch is brought on board and made available for sampling and inspection by a NMFS-approved observer, or fish that inadvertently fall out of or off fishing gear as gear is being brought on board the vessel.

* * * * *

3. In § 648.11, paragraph (m)(4) is revised to read as follows:

§ 648.11 At-sea sea sampler/observer coverage.

* * * * *

(m) * * *

(4) *Measures to address slippage.* (i) No vessel issued a limited access herring permit may slip catch, as defined at § 648.2, except in the following circumstances:

(A) The vessel operator has determined, and the preponderance of available evidence indicates that, there is a compelling safety reason; or

(B) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

(C) The vessel operator determines that pumping becomes impossible as a result of spiny dogfish clogging the pump intake. The vessel operator shall take reasonable measures, such as strapping and splitting the net, to remove all fish which can be pumped from the net prior to

release.

(ii) Vessels may make test tows without pumping catch on board if the net is re-set without releasing its contents provided that all catch from test tows is available to the observer to sample when the next tow is brought on board for sampling.

(iii) If a vessel issued any limited access herring permit slips catch, the vessel operator must report the slippage event on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch. Additionally, the vessel operator must complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and the reason for slipping catch; the estimated weight of each species brought on board or slipped on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iv) If a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit slips catch for any of the reasons described in paragraph (m)(4)(i) of this section, the vessel operator must move at least 15 nm (27.78 km) from the location of the slippage event before deploying any gear again, and must stay at least 15 nm (27.78 km) away from the slippage event location for the remainder of the fishing trip.

(v) If catch is slipped by a vessel issued an All Areas or Areas 2/3 Limited Access Herring permit for any reason not described in paragraph (m)(4)(i) of this section, the vessel operator must immediately terminate the trip and return to port. No fishing activity may occur during the return to port.

* * * * *

4. In § 648.14, paragraph (r)(1)(vii)(F) is added and paragraphs (r)(2)(v) through (xii) are revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(r) * * *

(1) * * *

(vii) * * *

(F) Transit or be in an area that has zero percent sub-ACL available for harvest specified at § 648.201(d) with herring on board, unless such herring were caught in an area or areas with an available sub-ACL specified at § 648.201(d), all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a vessel permit that authorizes the amount of herring on board for the area where the herring was harvested.

* * * * *

(2) * * *

(v) Fish with midwater trawl gear in any Northeast Multispecies Closed Area, as defined in § 648.81(a) through (e), without a NMFS-approved observer on board, if the vessel has been issued an Atlantic herring permit.

(vi) Slip or operationally discard catch, as defined at § 648.2, unless for one of the reasons specified at § 648.202(b)(2), if fishing any part of a tow inside the Northeast Multispecies Closed Areas, as defined at § 648.81(a) through (e).

(vii) Fail to immediately leave the Northeast Multispecies Closed Areas or comply with reporting requirements after slipping catch or operationally discarding catch, as required by § 648.202(b)(4).

(viii) Slip catch, as defined at § 648.2, unless for one the reasons specified at § 648.11(m)(4)(i).

(ix) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to move 15 nm (27.78 km), as required by § 648.11(m)(4)(iv) and § 648.202(b)(4)(iv).

(x) For vessels with All Areas or Areas 2/3 Limited Access Herring Permits, fail to immediately return to port, as required by § 648.11(m)(4)(v) and § 648.202(b)(4)(iv).

(xi) Fail to complete, sign, and submit a Released Catch Affidavit as required by § 648.11(m)(4)(iii) and § 648.202(b)(4)(ii) .

(xii) Fail to report or fail to accurately report a slippage event on the Atlantic herring daily VMS catch report, as required by § 648.11(m)(4)(iii) and § 648.202(b)(4)(iii).

* * * * *

§ 648.80 [Amended]

5. In § 648.80, paragraph (d)(7) is removed.

6. In § 648.200, paragraph (f)(2) is revised to read as follows:

§ 648.200 Specifications.

* * * * *

(f) * * *

(2) *Management Area 2 (South Coastal Area)*: All state and Federal waters inclusive of

sounds and bays, bounded on the east by 70°00' W. long. and the outer limit of the U.S. Exclusive Economic Zone; bounded on the north and west by the southern coastline of Cape Cod, Massachusetts, and the coastlines of Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia, and North Carolina; and bounded on the south by a line following the lateral seaward boundary between North Carolina and South Carolina from the coast to the Submerged Lands Act line, approximately 33° 48' 46.37" N. lat, 78° 29' 46.46" W. long., and then heading due east along 33°48' 46.37" N. lat. to the outer limit of the US Exclusive Economic Zone.

* * * * *

7. In § 648.201, paragraphs (e) and (f) are revised and paragraph (g) is added to read as follows:

§ 648.201 AMs and harvest controls.

* * * * *

(e) A vessel may transit an area that has zero percent sub-ACL available for harvest specified in paragraph (d) of this section with herring on board, provided such herring were caught in an area or areas with sub-ACL available specified in paragraph (d) of this section, that all fishing gear is stowed and not available for immediate use as defined in § 648.2, and the vessel is issued a permit that authorizes the amount of herring on board for the area where the herring was harvested.

(f) Up to 500 mt of the Area 1A sub-ACL shall be allocated for the fixed gear fisheries in Area 1A (weirs and stop seines) that occur west of 67°16.8' W. long (Cutler, Maine). This set-

aside shall be available for harvest by fixed gear within the specified area until November 1 of each fishing year. Any portion of this allocation that has not been utilized by November 1 shall be restored to the sub-ACL allocation for Area 1A.

(g) *Carryover.* Subject to the conditions described in this paragraph (g), unharvested catch in a herring management area in a fishing year (up to 10 percent of that area's sub-ACL) shall be carried over and added to the sub-ACL for that herring management area for the fishing year following the year when total catch is determined. For example, NMFS will determine total catch from Year 1 during Year 2, and will add carryover to the applicable sub-ACL(s) in Year 3. All such carryover shall be based on the herring management area's initial sub-ACL allocation for the fishing year, not the sub-ACL as increased by carryover or decreased by an overage deduction, as specified in paragraph (a)(3) of this section. All herring landed from a herring management area shall count against that area's sub-ACL, as increased by carryover. For example, if 500 mt of herring is added as carryover to a 5,000 mt sub-ACL, catch in that management area would be tracked against a total sub-ACL of 5,500 mt. NMFS shall add sub-ACL carryover only if the ACL, specified consistent with § 648.200(b)(3), for the fishing year in which there is unharvested herring, is not exceeded. The ACL, consistent with § 648.200(b)(3), shall not be increased by carryover specified in this paragraph (g).

8. In § 648.202, paragraphs (b)(2) introductory text, (b)(2)(ii), (b)(4) introductory text, and (b)(4)(ii) are revised, and paragraphs (b)(4)(iii) and (iv) are added to read as follows:

§ 648.202 Season and area restrictions.

* * * * *

(b) * * *

(2) No vessel issued an Atlantic herring permit and fishing with midwater trawl gear, when fishing any part of a midwater trawl tow in the Closed Areas, may slip or operationally discard catch, as defined at § 648.2, except in the following circumstances:

* * * * *

(ii) A mechanical failure, including gear damage, precludes bringing some or all of the catch on board the vessel for inspection; or,

* * * * *

(4) If catch is slipped or operationally discarded by a vessel, the vessel operator must:

* * * * *

(ii) Complete and sign a Released Catch Affidavit detailing: The vessel name and permit number; the VTR serial number; where, when, and for what reason the catch was released; the estimated weight of each species brought on board or released on that tow. A completed affidavit must be submitted to NMFS within 48 hr of the end of the trip.

(iii) Report slippage events on the Atlantic herring daily VMS catch report and indicate the reason for slipping catch if the vessel was issued a limited access herring permit.

(iv) Comply with the measures to address slippage specified in § 648.11(m)(4)(iv) and (v) if the vessel was issued an All Areas or Areas 2/3 Limited Access Herring Permit.